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HIGH COURT OF CHHATTISGARH, BILASPUR

Division Bench: **Hon'ble Shri L.C. Bhadoo &**
Hon'ble Shri Sunil Kumar Sinha, JJ

Criminal Death Reference No.2 of 2007

(Made by the Special Judge, Atrocities, Bilaspur under Section 366 (1) of the Code of Criminal Procedure)

Criminal Appeal No.871 of 2007

APPELLANT:

Tulsiram

-Versus-

RESPONDENT:

State of Chhattisgarh

JUDGMENT FOR CONSIDERATION

HON'BLE MR. JUSTICE SUNIL KUMAR SINHA

Sd/-
L.C. Bhadoo
Judge

Sd/-
SUNIL KUMAR SINHA
Judge

POST FOR PRONOUNCEMENT OF JUDGMENT ON 5th OCTOBER, 2007

Sd/-

5th-10-2007

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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Death Reference No.2 of 2007

(Made by the Special Judge, Atrocities, Bilaspur under Section 366 (1) of the Code of Criminal Procedure)

Criminal Appeal No.871 of 2007

APPELLANT: (In Jail)	Tulsiram, S/o Shivram @ Shivratan Manikpuri, aged 21 years, R/o Village Mohandi, P.S. Kota, District Bilaspur (C.G.)
	-Versus-
RESPONDENT:	State of Chhattisgarh, through the P.S. Kota, District Bilaspur (C.G.)

Present: -

Shri V.C. Ottalwar, Advocate:	For the condemned prisoner in criminal death reference.
Shri Akhil Mishra, Advocate:	For the accused/appellant in Cr.A. No.871/2007.
Shri Ashish Shukla, Addl. Public Prosecutor	For the State.

DIVISION BENCH*: -

HON'BLE SHRI L.C. BHADOO AND

HON'BLE SHRI SUNIL KUMAR SINHA, JJ.

J U D G M E N T

(Delivered on 05th October, 2007)

The following judgment of the Court was delivered by ***L.C. Bhadoo, J***: -

1. The condemned prisoner was tried by the Special Judge (Atrocities) Bilaspur in S.T. No:24/2007 for commission of offence under Sections 376 (2) (g) and 302 of the I.P.C. and Section 3(2) (v) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 for committing rape on Ms. Pinki @ Sangeeta and committing her murder in the night of 19-12-2006. Learned Special Judge after holding the condemned prisoner guilty for commission of offence under Section 376 (2)(g) of the I.P.C., sentenced him to undergo imprisonment for life & to pay a fine of Rs.5000/-, in default of payment of fine to further undergo R.I. for one year and under Section 302 of the I.P.C. sentenced him to capital punishment. However, he was

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acquitted of the charge under Section 3(2)(v) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Criminal Appeal No.871 of 2007 has been filed by the condemned prisoner challenging legality & correctness of conviction and sentence imposed upon him by the learned Special Judge, Bilaspur, vide impugned judgment dated 27th August, 2007. On the other hand, learned Special Judge has made Criminal Death Reference No.2 of 2007 under Section 366 (1) of the Cr.P.C. to this Court for confirmation of the death sentence imposed by him on the condemned prisoner.

3. This judgment shall dispose of the aforesaid appeal filed by the condemned prisoner and the reference made by learned Special Judge, Bilaspur.

4. The case of the prosecution, in brief, is that on 19-12-2006 at about 7-8 p.m. Ms. Pinki @ Sangeeta (since deceased) had gone to watch TV to the house of her grandfather Konda Gond, at that time her cousin sister Ku. Jyoti (PW-1) and grandmother Ratan Bai (PW-2) were also present in the house. Her grandfather Konda was also present in the house, but he went for sleep. In the morning of 20th December, 2006 villager namely, Kallu came and informed grandfather Konda that Ms. Pinki @ Sangeeta has died on account of drowning in Ram Sagar pond. On coming to know about this fact, Konda, Gorelal (PW-4) father of the deceased, Jati Patel and others had gone to the pond and saw that body of Ms. Pinki @ Sangeeta was floating in the pond. The body of Ms. Pinki @ Sangeeta was taken out from the pond. They saw that there was cut injury on the neck. The matter was reported by Konda in the Police Station Kota whereupon S.H.O., Police Station Kota registered merg intimation Ex.P/17 and first information report Ex.P/18. He took up the investigation and left for scene of occurrence. He prepared inquest Ex.P/13 on the body of Ms. Pinki @ Sangeeta, after giving notice Ex.P/14 to the Panchas, prepared site plan Ex.P/19. The dead body of Ms. Pinki @ Sangeeta was sent for postmortem examination to the Government Hospital, Kota under Ex.P/20 where Dr. A.K. Jha (PW-9) conducted the postmortem on the body of Ms. Pinki @ Sangeeta. He opined that cause of death was due to injury to the vital organ i.e. cutting of trachea. The mode of death was asphyxia with a shock. Death was homicidal in nature. He prepared the postmortem report Ex.P/8. The body of Ms. Pinki @ Sangeeta was also examined by PW-13 Dr. Nikita Kanwar, Medical Officer, Community Health Centre, Kota, in order to ascertain as to whether rape was committed on her. She found that there was bleeding

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from vagina. Hymen was ruptured. Vaginal wall was ruptured about ½". She opined that Ms. Pinki @ Sangeeta was subjected to rape & she died on account of asphyxia as a result of injury to trachea. Death was homicidal in nature.

5. During the investigation, condemned prisoner Tulsiram was arrested. He gave memorandum Ex.P/2 to the investigating officer, in pursuance of that, old towel was recovered at his instance under Ex.P/3. Juvenile co-accused Vishwanath @ Bopda also gave memorandum Ex.P/1, in pursuance of that, one T-shirt and one full pant were seized under Ex.P/4. Viscera of the deceased were seized under Ex.P/5. The blood stained soil from the Footpath which was going to the pond and one blade were seized under Ex.P/11. Site plan Ex.P/12 was prepared by Patwari. Seized articles were sent for chemical examination to the Forensic Science Laboratory, Raipur under Ex.P/23.

6. After completion of the investigation, charge sheet was filed against the accused persons in the Court of Judicial Magistrate, 1st Class, Bilaspur. Co-accused Vishwanath @ Bopda being a juvenile was forwarded to the Juvenile Justice Board whereas, case of the present accused/appellant was committed to the Sessions Judge, Bilaspur from where learned Special Judge received the case on transfer for trial.

7. The prosecution in order to establish the charge against the accused examined 15 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied material appearing against him in the prosecution evidence, stated that he is innocent and has been falsely implicated in the crime. He produced two defence witnesses namely, Latel Das (DW-1) and Badri Das Manikpuri (DW-2). After hearing learned counsel for the respective parties, learned Special Judge convicted and sentenced the condemned prisoner as aforementioned.

8. We have heard learned counsel for the parties.

9. Shri Akhil Mishra and Shri V.C. Ottalwar, learned counsel for the condemned prisoner, have not disputed homicidal death of Ms. Pinki @ Sangeeta. Moreover, PW-9 Dr. A.K. Jha, who conducted autopsy on the body of Ms. Pinki @ Sangeeta, has stated that on 20th December, 2006 at about 2.30 p.m. he conducted autopsy on the body of Ms. Pinki @ Sangeeta. He noticed that marks of fingers and thumb were present on the

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neck below thyroid. On dissection of the neck, it was noticed that muscles and veins were ruptured. Clotted blood was present. There was cut injury below thyroid in the size of 3" x ½" x cutting of trachea. Clotted blood was present. Hymen was ruptured. Clotted blood was present on the right vaginal wall. Injuries were ante mortem in nature. Cause of death was on account of pressing of neck, asphyxia and on account of cut injury on trachea. Death was homicidal in nature. PW-13 Dr. Nikita Kanwar has also stated that she examined Ms. Pinki @ Sangeeta on 20th December, 2006. Up to ½" hymen was ruptured. There was bleeding from vagina. In her opinion, Ms. Pinki @ Sangeeta was subjected to rape. There was cut injury on trachea, cause of death was asphyxia and shock. Death was homicidal in nature. In view of the evidence of both these doctors, death of Ms. Pinki @ Sangeeta was homicidal in nature and she was subjected to rape also.

10. As far as complicity of the accused persons in the crime in question is concerned, conviction of the accused primarily rests on the testimony of PW-1 Jyoti. She has stated that on the fateful night she was sleeping at her residence along with Ms. Pinki @ Sangeeta. In the night, Ms. Pinki @ Sangeeta asked her to wake up & said that she wants to go for urination. Condemned prisoner Tulsi and Bopda were standing near their house. The accused persons kidnapped Ms. Pinki @ Sangeeta. She came back in the house and informed her grandmother. She was sleeping at that time. Accused Bopda was residing in adjoining house whereas, condemned prisoner Tulsi was also residing in her village. Both the accused persons are known to her. They used to come to their house for watching TV. In cross-examination, she has stated that 2-3 days after the incident police recorded her statement, before that she did not disclose anything to anybody. It is incorrect to say that her statement was recorded 9-10 days after the incident. She did not give portion A to A of the police case diary statement Ex.-D/1 that she was frightened of Bopda and Tulsi, therefore, she did not disclose the incident earlier. How portion A to A has been written to that effect, she does not know. She has further stated that in the fateful night in the house of her grandmother she along with Kavita, Ms. Pinki @ Sangeeta and her uncle's son Dilip were sleeping. When the accused persons took Ms. Pinki @ Sangeeta, she did not disclose this fact to Dilip. She did not disclose the said fact up to 8-9 days. How portion C to C of Ex.D/1 that "8-9 days before" is written she does not know. It is correct that in the fateful night there was darkness on account of the fact that light was off.

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11. PW-2 Ratan Bai, grandmother of the deceased, has stated that in the fateful night her granddaughter Ms. Pinki @ Sangeeta, Jyoti and her younger sister were at her residence. When she was sleeping, Jyoti came and said that Tulsi and Bopda, she thought that what she is saying "Bora", as she was asleep. There were "Boras" (bags) in their house. She thought that somebody might have taken away "Bora". Therefore, she asked Jyoti to put on the light, at that time Ms. Pinki @ Sangeeta was not there. She thought that Ms. Pinki @ Sangeeta might have gone to her father's house. She saw that all the Boras were there, therefore, she asked Jyoti to go for sleep. In the morning, when she woke up, mother of Ms. Pinki @ Sangeeta came and enquired about Pinki, she informed her that in the night itself Pinki left for the house, then mother of Ms. Pinki @ Sangeeta replied that she did not return to the house. Later on, she came to know that dead body of Ms. Pinki @ Sangeeta was found in the pond. In cross-examination, she has also stated that in the fateful night her three granddaughters and grandson Dilip were sleeping. In the fateful night Jyoti asked her to wake up and talked about Bopda. She thought that she was saying about "Bora". She also disclosed the name of Tulsi. The police persons also enquired from Dilip. The scrutiny of the evidence of these two witnesses shows that there are lots of contradictions in the evidence of these two witnesses. Their evidence does not inspire confidence of the Court for the following reason:-

> 'In the first instance PW-2 Ratan Bai has stated that she was sleeping. Jyoti asked her to wake up. She took the names of Bopda and Tulsi. As she was asleep, therefore, she thought that Jyoti was talking about Bora, hence she asked Jyoti to put on light, at that time Ms. Pinki @ Sangeeta was not there. She thought that Ms. Pinki @ Sangeeta might have gone to her father's house. This explanation of the witness is totally false and unbelievable. Even in para-14 of her cross-examination, she has stated that apart from Bopda, Jyoti also talked about Tulsi. When Jyoti had taken the names of both the accused persons, then why she had not enquired from Jyoti as to why she was talking about Bopda and Tulsi. Therefore, explanation given by this witness is far from truth. Even statement Ex.D/2 of Ratan Bai was recorded twice by the police. In the first statement recorded on 21-12-2006, she had stated that in A to A

portion Ms. Pinki @ Sangeeta said that she is going to her house, therefore, she asked her to go. Thereafter, she left all alone for her house. Jyoti and Kavita slept with her. In the morning, mother of Ms. Pinki @ Sangeeta came and enquired about Pinki. This appears to be correct statement of Ratan Bai. However, her second statement under Section 161 Cr.P.C. was recorded on 29-12-2006 i.e. about 8 days thereafter in which theory that Jyoti asked her to wake up & she talked about Bopda and Tulsi has been created. Had it been so, then why she did not disclose this fact to the police when her previous statement Ex.D/2 was recorded by the police on 21-12-2006. PW-1 Jyoti has also stated that she asked her grandmother to wake up, at that time she was asleep. Had the accused persons kidnapped Ms. Pinki @ Sangeeta in presence of this witness, then she ought to have raised cries that the accused persons have kidnapped Ms. Pinki @ Sangeeta. As a natural course of conduct, she ought to have informed her grandfather who was sleeping in the house. She has not stated that when the accused persons kidnapped Ms. Pinki @ Sangeeta, whether they gagged mouth of Ms. Pinki @ Sangeeta. Had these persons kidnapped Ms. Pinki @ Sangeeta in her presence, she ought to have raised cries in order to prevent accused persons from taking away Pinki. The evidence of Jyoti does not inspire confidence for the reason that as per para-10 of her evidence and para-12 of the evidence of Ratan Bai, Dilip was also sleeping in the same room. Had the accused persons kidnapped Ms. Pinki @ Sangeeta, she ought to have informed him also. On the contrary, from cross-examination of the investigation officer PW-15 Shahid Ali, in para-26, he has categorically admitted that during the investigation, investigation was made from Dilip who was sleeping in the house of Ratan Bai. Even Dilip was subjected to medical examination, his nails were taken for chemical test, thereafter he was left. This fact also suggests that nobody was knowing that who kidnapped Ms. Pinki @ Sangeeta that is why Dilip was subjected to investigation. For the first time i.e. on 29-12-2006 Jyoti was introduced as a witness. Jyoti has stated that portions A to A and B to B of

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Ex.D/1 were not given by her to the police after 9-10 days of the incident. In her examination-in-chief, she has not stated that on account of fear of the accused persons she did not disclose the fact that the accused persons kidnapped Ms. Pinki @ Sangeeta. Her whole statement is unnatural and improbable. As per the prosecution case in the morning of 20-12-2006 Kallu came and informed about the body of Ms. Pinki @ Sangeeta lying in the pond and that is why merg intimation Ex.P/17 was given by Konda, grandfather of Ms. Pinki @ Sangeeta in whose house Ms. Pinki @ Sangeeta went to watch TV. He has mentioned that in the morning Kallu came and informed that body of Ms. Pinki @ Sangeeta is lying in Ram Sagar pond. He along with Gorelal, Patel and others went to the pond and saw the body. There was injury on the neck. On enquiry from his wife Ratan Bai, she disclosed that in the night at about 10 p.m. after watching TV Ms. Pinki @ Sangeeta left the house saying that she is going to her house. Therefore, till 29th December, 2006 these accused persons were not in picture and they were picked up only on 29-12-2006, before that nobody was knowing that who kidnapped Ms. Pinki @ Sangeeta, committed rape on her and murdered her. Therefore, evidence of these two witnesses is far form truth and they are cooked up witnesses.

12. As far as recovery of the clothes of the condemned prisoner is concerned, in the first instance memorandum Ex.P/2 of Tulsi does not bear his signature. Therefore, it cannot be said that this memorandum was given by condemned prisoner Tulsi. For this, we are fortified in our view by the decision of the Apex Court in the matter of **Jackaran Singh v. State of Punjab** reported in **AIR 1995 SUPREME COURT 2345**. Moreover, as per the FSL report Ex.P/23, no blood was found on the towel 'C' of condemned prisoner Tulsi. Even blade, weapon of offence, which was alleged to have been used for slitting the neck of the deceased was found in open place, moreover, that has not been recovered at the instance of the condemned prisoner. Even the condemned prisoner was subjected to medical examination for potency as also for any injury on the body. PW-8 Dr. Sandeep Dwivedi examined the condemned prisoner. He has stated that there was no injury on any part of the body of the condemned prisoner.

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13. For the foregoing reasons, there is no circumstantial evidence to connect the condemned prisoner with the crime in question. Even evidence of PW-1 Jyoti and PW-2 Ratan Bai does not inspire confidence of the Court. Therefore, conviction of the condemned prisoner for commission of offence under Sections 302 and 376 (2)(g) of the I.P.C. cannot be sustained.

14. In the result, Criminal Appeal No.871/2007 filed by the condemned prisoner succeeds and same is allowed. Conviction and sentences imposed upon the condemned prisoner under Sections 376 (2)(g) and 302 of the I.P.C. are set aside. He is acquitted of the said charges. He be set at liberty forthwith, if not required in any other case. Criminal Death Reference No.2/2007 made by the learned Special Judge is hereby rejected.

Sd/-
L.C. Bhadoo
Judge

Sd/-
SUNIL KUMAR SINHA
Judge

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